



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 13 2004

OFFICE OF
CIVIL RIGHTS

RETURN RECEIPT REQUESTED
Cert. No. 7003 1680 0004 9923 1735

In Reply Refer To:
EPA File No: 05-03-R6

Miles Tolbert
Secretary of Environment
Oklahoma Department of Environmental Quality
P.O. Box 1677
Oklahoma City, OK 73101-1677

Re: PARTIAL ACCEPTANCE/REQUEST FOR CLARIFICATION

Dear Mr. Tolbert:

This is to notify you that the U.S. Environmental Protection Agency's (EPA) Office of Civil Rights (OCR) is partially accepting the August 21, 2003, administrative complaint filed against the Oklahoma Department of Environmental Quality (ODEQ). The complaint was filed on behalf of the Ponca Tribe (Complainant) in Oklahoma. The complaint alleges that ODEQ has violated Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and EPA's regulations implementing Title VI, found at 40 C.F.R. Part 7.

Under Title VI, a recipient of Federal financial assistance may not discriminate on the basis of race, color, or national origin. Pursuant to EPA's Title VI administrative regulations, OCR conducts a preliminary review of Title VI complaints for acceptance, rejection, or referral. 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's Title VI regulations. First, it must be in writing. Second, it must describe alleged discriminatory acts that violate EPA's Title VI regulations (*i.e.*, an alleged discriminatory act based on race, color, or national origin). Third, it must be filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. § 7.120(b)(2). Fourth, it must be filed against an applicant for, or a recipient of, EPA financial assistance that committed the alleged discriminatory act.

For reasons listed below, OCR is accepting the complaint in part, rejecting it in part, and requesting clarification on one allegation. With respect to any allegations

alleging discrimination on the basis of low-income status, EPA does not have jurisdiction to investigate complaints of discrimination on this basis. Accordingly, the complaint is in writing, signed, and provides an avenue for contact. However, issues relating to timeliness and describing an alleged discriminatory act that violates EPA's Title VI regulations will be discussed below.

Complaint Allegations

1. ODEQ's denial of meaningful public participation opportunities regarding the review of a permit renewal application disparately impacted members of the Ponca Tribe. - Accepted

The complaint states that on April 29, 2003, Continental Carbon Company submitted a wastewater permit renewal application that sought a variance. The complaint alleges that when the Complainant first sought to review the permit application at the ODEQ headquarters, it had been removed from public review because of the Company's claim of confidentiality. The complaint also alleges that ODEQ stated that they could approve the permit application before the application was made available to the public, and that no public hearing or comment was necessary prior to approval.

This allegation is accepted for investigation because it meets EPA's four jurisdictional requirements. First, the complaint is in writing. Secondly, the complaint states a discriminatory act alleging that ODEQ denied the complainants meaningful public participation opportunities regarding the review of a permit renewal application, and this denial of public participation disparately impacted members of the Ponca Tribe. Thirdly, the complaint was filed within 180 days of the alleged discriminatory act. Lastly, ODEQ is a recipient of EPA federal financial assistance.

2. ODEQ did not fully enforce the MOU entered into on March 3, 1995, with Continental Carbon Company, and ODEQ's inadequate enforcement practices and discriminatory permitting disparately impacted the complainants. - Rejected

The complaint states that ODEQ entered into a Memorandum of Understanding (MOU) with Continental Carbon Company on March 3, 1995. The complaint alleges that ODEQ did not properly enforce the MOU because ODEQ misrepresented and falsely legitimized Continental Carbon Company's sampling. The complaint also alleges that ODEQ gave the false impression that the facility was in compliance with the MOU. Additionally, the complaint alleges that ODEQ violated the MOU by issuing Permit Number 89-020-C (PSD) (M-2) without the MOU being fully executed and this issuance dramatically increased air pollution emissions and disparately impacted the members of the Ponca Tribe. OCR cannot accept this allegation for investigation because it does not meet the jurisdictional requirement of timeliness. A complaint must be filed no later than 180 days after the date of the alleged discriminatory act. The alleged discriminatory acts described in this allegation occurred more than 180 days before the filing of this complaint. Therefore, OCR cannot accept this allegation for investigation.

3. ODEQ refused to investigate and/or adequately investigate possible violations identified by the Complainant related to Permit 98 176-TV issued to Continental Carbon Company. - Rejected

The complaint states that in April of 2000, Continental Carbon Company received a Title V Operating Permit (98 176-TV). The complaint alleges that subsequently there was a high volume of air pollution (fugitive dust) complaints and that ODEQ's failure to conduct adequate investigations constitutes a discriminatory practice which resulted in a disparate impact on the members of the Ponca Tribe. Moreover, the complaint states that on December 6, 2002, a letter was sent to ODEQ requesting an investigation into possible violations of Permit 98 176-TV provisions related to a thermal oxidizer. The complaint alleges that in a letter dated December 16, 2002, ODEQ refused to investigate the possible violations because an October 2, 2002, compliance inspection had failed to identify any violations.

OCR cannot accept these allegations for investigation because the discriminatory acts you allege do not meet the jurisdictional requirement of timeliness. A complaint must be filed no later than 180 days after the date of the alleged discriminatory act for it to meet the requirement of timeliness. These alleged acts occurred more than 180 days before this complaint was filed. Therefore, OCR cannot accept this allegation for investigation.

4. ODEQ's enforcement actions and practices are discriminatory and have a disparate impact. - Rejected

The complaint alleges that ODEQ refused to take enforcement action against Continental Carbon Company for operating a wastewater treatment and disposal system without the required permit. The complaint states that ODEQ issued Continental Carbon Company a permit dated August 13, 1991, which expired on August 12, 1996. The complaint alleges that once the permit expired in 1996, Continental Carbon Company did not apply for a permit renewal until June 16, 1998. The complaint also alleges that ODEQ refused to take enforcement action against Continental Carbon Company for misrepresenting important information in its Application to Discharge and/or Dispose of Industrial Wastewater or Sludge. The complaint alleges that ODEQ was made aware of the continuing misrepresentations by the Continental Carbon Company, but ODEQ refused to initiate enforcement action.

Your complaint also alleges that ODEQ refused to take adequate enforcement action against Continental Carbon Company for violations of state and federal laws prohibiting unauthorized wastewater discharges. The complaint states that on February 19, 2002, an ODEQ investigator visited the facility and reported two violations of the permit and a violation of freeboard requirements that referred to the wastewater levels in Lagoon #1. The complaint alleges that these violations were ignored and disregarded by ODEQ in the issuance of the February 12, 2002 Notice of Violation, and the May 6, 2002 Consent Order. OCR cannot accept these allegations for investigation because they do

not meet the jurisdictional requirement of timeliness. A complaint must be filed within 180 days after the date of the last alleged discriminatory act. These alleged discriminatory acts occurred more than 180 days before this complaint was filed. Therefore, OCR cannot accept this allegation for investigation.

5. ODEQ's enforcement of its complaint investigation procedures is discriminatory against the Ponca Tribe. – Clarification Needed


The complaint cites to a sentence in a March 17, 2003, investigation report that states ODEQ investigators have observed black particulate matter on outdoor premises and work trucks. The complaint states that no action was taken after that observation and therefore considers this evidence that ODEQ is not enforcing its complaint investigation procedures.

Additional clarification is needed to determine whether a discriminatory act occurred that violated EPA's Title VI regulations. Please provide a complete copy of the March 17, 2003, investigation report cited in the complaint. The entire March 17, 2003 investigation report is needed to review the entire record of what was observed and reported by ODEQ, and what actions, if any, were proposed. Please provide the requested information within 30 days of your receipt of this letter. If this information is not provided within this period, OCR will not accept this allegation for investigation.

Accordingly, OCR will discuss, at any point during the process, offers to informally resolve the complaint, and will, to the extent appropriate, facilitate an informal resolution process and the involvement of affected stakeholders.

If you have any questions, please contact Ms. Helena Wooden-Aguilar of my staff by phone at (202) 343-9681, by e-mail at Wooden-Aguilar.Helena@epa.gov, or by mail to the U.S. EPA Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,



Karen D. Higginbotham
Director

cc: Michael C. Bigheart
Mitchell & DeCleark, P.L.L.C.
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Enid, Oklahoma 73701

Steve Pressman, Associate General Counsel
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